

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE FOURTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 873 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated
22/12/2004 in WP NO : 23404 OF 2004 on the file of the High Court.)

Between:

- 1 The Sr. Security Commissioner, Railway Protection Force,
South Central Railway, Vijayawada Division, Vijayawada, Krishna District.
- 2 Sri J.R. Sastry, Inspector , Enquiry Officer, Railway Protection
Force, Nidadavole, West Godavari District.

..... APPELLANTS

AND

N. Vazaraiah, s/o Kotaiah, R/o D.No. 74-6-6/1, Swamy Ayappa Nagar, Near
Savarkar Road, Vijayawada - 7, Krishna District.

.....RESPONDENT

Counsel for the Appellants:MR.GOURI SHANKAR SANGHI

Counsel for the RespondentMR.J.M.NAIDU

The Court made the following :

JUDGMENT: (Per Hon'ble Smt T. Meena Kumari,J)

This writ appeal is filed by the appellants aggrieved by the order dated 22-12-2004 in W.P.No.23404 of 2004 wherein the learned Single Judge allowed the writ petition directing the first appellant to appoint an officer in the cadre of Assistant Security Commissioner or above as Enquiry Officer and thereafter proceed with the enquiry as per the Rules.

The appellants herein are the respondents in the writ petition and the respondent is the writ petitioner. For the sake of convenience, they are referred to herein as they are arrayed in the writ petition.

Originally, the writ petition was filed seeking a direction in the nature of a writ of mandamus declaring the action of the 1st respondent in appointing the 2nd respondent as enquiry officer vide proceedings dated 25-11-2004 to conduct enquiry in the charge sheet dated 20-10-2004 even though he is subordinate officer to the Assistant Security Commissioner, who conducted the preliminary enquiry, as illegal and arbitrary.

The case of the writ petitioner is that when he was working as a Sub-Inspector of Police, Bitragunta, the 1st respondent issued a charge sheet dated 20-10-2004 to him basing on the preliminary enquiry conducted by the Assistant Security Commissioner, R.P.F with regard to certain irregularities in preventing the thefts from his jurisdiction. Without giving any opportunity to submit his explanation, the 1st respondent directly appointed the Assistant Security Commissioner as Enquiry Officer. As the Enquiry Officer was transferred to Dhanbad, again the first respondent appointed the second respondent as Enquiry Officer vide proceedings dated 25.11.2004. The grievance of the writ petitioner is that when the superior officer was appointed to conduct the preliminary enquiry, a subordinate officer cannot be appointed as Enquiry Officer and it will cause prejudice to him. Hence, he filed the above said writ petition.

The learned Single Judge having observed that as the guidelines issued by the Railway Board in Circular dated 10.4.1962 are very clear that in a case of preliminary enquiry conducted by an officer, an Enquiry Officer above his rank can be appointed, so that such Enquiry Officers shall not be influenced by the previous officer, who conducted the preliminary enquiry, allowed the writ petition. Having aggrieved by the same, the present writ appeal is preferred by the respondents.

Heard both the counsel.

The learned counsel for the appellants/respondents contends that there is a specific rule under Rule 153.2 of R.P.F, 1987 providing for nominating the Enquiry Officer viz., Inspector/RPF for conducting the enquiry against the writ petitioner. Therefore, the order of the learned Single Judge in directing to appoint only the Assistant Security Commissioner to conduct enquiry will give scope for every member of the force of the lower rank to insist that the enquiry has to be conducted by the Assistant Security Commissioner and such

procedure is quite contrary to the RPF rules.

Per contra, the learned counsel for the writ petitioner-respondent contends that the present Enquiry Officer is the investigating officer in Crime No.15 of 2004 registered on the allegation that the writ petitioner has not taken care and acted in negligent manner and therefore, appointment of the 2nd appellant as Enquiry Officer would cause prejudice to him and considering all these facts, the learned Single Judge allowed his petition and therefore, it cannot be interfered with.

A perusal of the record goes to show that as per the circular dated 10.4.1962, when it was brought to the notice of the Board, in certain cases departmental enquiry was held by an officer of a status lower than the one who had conducted the fact finding enquiry and in such cases, there was every possibility of the enquiry officer being influenced by the findings of the superior authority, the board have considered the matter and decided that the departmental enquiries for disciplinary action should not be entrusted to an officer lower in status than that of the officer who conducted the fact finding enquiry. In the instant case, no material was placed before the Court to the effect that the rules of RPF contains the guidelines issued by the Board vide circular dated 10.4.1962. In the absence of such material, it can be held that the circular dated 10.4.1962 is in accordance with the rules. Therefore, the appointment of the 2nd respondent as Enquiry Officer consequent upon the transfer of earlier Enquiry Officer viz., Assistant Security Commissioner, is unsustainable. Following the guidelines in the said circular the learned Single Judge passed the order under appeal directing the appellants to appoint an Officer in the cadre of Assistant Security Commissioner or above as Enquiry Officer.

Under the above facts and circumstances, while upholding the finding of the learned Single Judge, We modify the order under appeal to the effect that the appellants herein shall appoint an Enquiry Officer of the same rank to that of the preliminary Enquiry Officer viz., Assistant Security Commissioner, within a period of one month from the date of receipt of a copy of this order and the enquiry has to be completed within a period of three months thereafter, in accordance with law. We also make it clear that the order of the learned Single Judge should not be considered as a precedent for the future cases.

With the above observation, the Writ Appeal is disposed of. No order as to costs.

T.MEENA KUMARI , J

P.LAKSHMANA REDDY,J

Dated:14-06-2005

Sj/Nn

To

1. The Sr. Security Commissioner, Railway Protection Force, South Central Railway, Vijayawada Division, Vijayawada, Krishna District.
2. Two C.D. copies.